

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

MARK KERSHAW, et al.,

Appellants,

v.

CITY OF KANSAS CITY, MISSOURI,

Respondent.

DOCKET NUMBER WD76864

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: May 6, 2014

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Edith L. Messina, Judge

JUDGES

Division One: Ellis, P.J., and Mitchell and Gabbert, JJ.

CONCURRING.

ATTORNEYS

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Attorneys for Appellants,

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MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

MARK KERSHAW, et al.,)
)
Appellants,)
v.) **OPINION FILED:**
) **May 6, 2014**
CITY OF KANSAS CITY, MISSOURI,)
)
Respondent.)

WD76864

Jackson County

Before Division One Judges: Joseph M. Ellis, Presiding Judge, and Karen King Mitchell and Anthony Rex Gabbert, Judges

Mark Kershaw, an employee of the City of Kansas City, and his wife, Esther Kershaw, brought a declaratory judgment suit against the City of Kansas City, Missouri, to recover money from the City Legal Expense Fund on an underlying negligence judgment against Mark Kershaw's co-employee, Donald Starr. The Kershaws' appeal from the trial court's judgment sustaining the City's motion for summary judgment and denying the Kershaws' motion for summary judgment. The Kershaws raise two points on appeal. First, they contend that the City did not have immunity because 1) City employee Donald Starr did not have immunity as to the Kershaws' original tort claim; and 2) the City's ordinance establishing the City Legal Expense Fund constitutes an agreement to pay for damages caused by its employees, obviating any immunity for the City. Second, they contend that the City's ordinance covers their claim in that the ordinance compels the City to pay for damages caused to third parties injured by City employees, and their claims fall within the province of the ordinance irrespective of Mark Kershaw's status as a co-employee.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

Division One holds:

Section 2-1685(g) of the City Legal Expense Fund ordinance clearly and unequivocally establishes a duty on the City's part, wholly independent of its duty to Kershaw under the Workers' Compensation Act, to pay Starr on the Kershaws' negligence judgment, and section 2-

1685(g) of the ordinance does not broaden the City's liability under sections 567.600 to 567.610 RSMo in violation of section 2-1685(d) of the ordinance. The release in Kershaw's workers' compensation action against the City is not a general release of any and all claims arising out of the accident giving rise to this action. Nor is the language of the release broad enough to release any claim Kershaw may have against a third party such as Starr. Therefore, the trial court erred in granting the City's motion for summary judgment.

Opinion by: Karen King Mitchell, Judge

May 6, 2014

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